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ABSTRACT

The purpose of this paper is to trace the major developments which have served to shape the current issues of access and ascertainment as they relate to America's system of broadcasting. The various topics discussed include the origins of broadcast access, testing broadcast access and the law, the evolution of community ascertainment, revisions and criticisms of ascertainment, and an assessment of access and ascertainment. (TS)

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ACCESS AND ASCERTAINMENT:
A SHORT HISTORY OF THE ISSUES

A Paper Presented
to
Western Speech Communication Association
Annual Convention
November 24, 1975

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Introduction

The interrelated topics of broadcast access and community ascertainment have occupied such a central position in discussions about the broadcasting industry during the past five years that it is nearly impossible for anyone in the field of mass communication not to have at least a limited awareness of their evolution. Yet, once the generalizations and major philosophical positions have been reviewed, there remains a considerable amount of confusion as to the significance and implications of current regulations and broadcast practices. The words "access" and "ascertainment" have been used in such a variety of contexts that the connotations associated with each term are frequently the source of misunderstandings both within and without the broadcast media. Thus, the purpose of this paper is to briefly trace the major developments which have served to shape the current issues of access and ascertainment as they relate to America's system of broadcasting. In addition, this summary will hopefully assist in the recognition of meaningful avenues of inquiry that will provide a basis for further discussion and research.

Origins of Broadcast Access

With a First Amendment to the United States Constitution which guarantees freedom of expression for all U. S. citizens, it is not surprising to find this protection making its way into the first meaningful piece of broadcast legislation in the United States. Borrowing from the language

of an earlier public utilities act, the Radio Act of 1927 established an administrative agency (Federal Radio Commission) that was charged to regulate a privately owned system of voice broadcasting according to the "public interest, convenience, or necessity." In doing so, the FRC was given responsibility for selecting from all available applicants, those who should be granted access to the air waves. When the Radio Act of 1927 was revised six years later, these important obligations were entrusted to the seven-member Federal Communications Commission, created by the Communications Act of 1934.

The judgments of Congress in 1927 and 1934 were as much a product of the law of nature as they were the law provided under the First Amendment. Unlike the unlimited entry afforded by the print media, the radio spectrum dictates specific restrictions. The physical characteristics of the radio spectrum are absolute, and its capacity as a means of electronic communication is limited. Recognizing this fundamental distinction between print and electronic communication, Congress assured that access to the radio spectrum would be controlled in a manner that was consistent with the common good of all the people.

It was clear from the beginning that this fundamental position would be the basis of an on-going debate that continues through the present day. That radio was inherently different from print media and therefore would receive different regulatory interpretations was first tested in the courts in the early 1930's. In the case of Near v. Minnesota (1931), the U. S. Supreme Court ruled that government had no power to restrict a newspaper

from publishing vicious statements about law enforcement agencies or religious groups. However, during the following year, in the case of Trinity Methodist Church, South v. FRC (1932), the U. S. Court of Appeals reaffirmed the right of the FRC to deny a broadcaster a renewal of his license for making similar kinds of statements over the air. The FRC's decision concerned a Reverend Doctor Schuler, licensee of KGEF radio, Los Angeles, who was accused by a number of local citizens of, among other objectional utterances, broadcasting attacks on the Roman Catholic Church. Dr. Schuler appealed the decision to the Supreme Court, but it declined to review the case. Hence, it was determined early that the denial of a broadcast license was not an abridgement of freedom of speech in the same sense that suppression of a publication constitutes prior restraint, and furthermore, that the regulatory powers of FRC (and later FCC) would be upheld.

During the remainder of the 1930s and early 1940s, the FCC exercised its regulatory authority on a case-by-case basis, usually to the satisfaction of broadcast licensees. However, caught in the uncomfortable position of being unable to involve itself directly in the specification of appropriate programming, while responding more and more negatively to the program choices of broadcasters at the time of license renewal, the FCC sought out the assistance of Charles A. Siepmann to draft a programming policy statement that would assist broadcasters in the development of program schedules and provide a guideline for assessing their performance. This policy statement, frequently referred to as the "Blue Book," outlined the

Commission's concern with the status of program service, a review of the FCC's jurisdiction with respect to programming, aspects of "public interest" interpretation, the weakness of broadcasters' arguments citing economic burdens, and proposals for future Commission policy. The document stated that although the FCC recognized its responsibilities as the licensing agency established by Congress, it had to rely upon forces in the public sector to monitor the performance of broadcasters. The role of professional critics was underscored, and a plea was made for more regular critical consideration. As to the public in general, the Commission called for the expansion of radio listener councils which could be instrumental in surveying public preferences and attitudes, monitoring stations for omissions of public interest programs and serving to promote forthcoming programs of community interest. Response to the "Blue Book" from the broadcasting industry was immediate. The FCC was seen as overstepping its authority and being in violation of Section 326 of the Communication Act (censorship). Perhaps intended more as a warning of potential program reform than actual Commission policy, the "Blue Book" was never officially adopted nor enforced.

An important segment of programming which had received specific attention by the FCC prior to 1940 was that of station editorializing. During November, 1939, the FCC held hearings in the matters of a competing application for a construction permit filed by The Mayflower Broadcasting Corporation and license renewal applications for main and auxiliary transmitters of The Yankee Network, Inc. in Boston, Massachusetts. Exceptions

to the proposed conclusions were filed by The Mayflower Broadcasting Corporation which resulted in subsequent legal debate in September, 1940. Then, on January 16, 1941, the FCC issued a "Decision and Order" which became known as the "Mayflower Decision." Ironically from an historical standpoint, the denial of Mayflower's application for a construction permit was of incidental importance. Of major significance was the position of the Commission regarding the policy of Yankee's station, WAAB, to broadcast editorials urging the election of various candidates and supporting a particular side of controversial issues. Making clear its opinion, the Commission stated, "...that with the limitations in frequencies inherent in the nature of radio, the public interest can never be served by a dedication of any broadcast facility to the support of [one's] own partisan ends."¹ The FCC went on to explain that a truly free system of broadcasting could not be used to support the causes of the licensee or back the election of a particular candidate. In short, the broadcaster could not serve as an advocate:

"Freedom of speech on the radio must be broad enough to provide full and equal opportunity for the presentation to the public of all sides of public issues. Indeed, as one licensed to operate in a public domain the licensee has assumed the obligation of presenting all sides of important public questions, fairly, objectively and without bias. The public interest--not the private--is paramount."²

The concept of fairness in broadcasting continued to be a basic, although confusing, consideration in license renewal decisions until June 1, 1949, when, following eight days of public hearings, the Commission issued its report on "Editorializing by Broadcast Licensees." Repeating a position

taken earlier by the Commission, the report stated:

"The life of each community involves a multitude of interests some dominant and all pervasive such as interest in public affairs, education and similar matters and some highly specialized and limited to few. The practical day-to-day problem with which every licensee is faced is one of striking a balance between these various interests to reflect them in a program service which is useful to the community, and which will in some way fulfill the needs and interests of the many."³

However, unlike the Mayflower Decision which restricted broadcast licensees from taking an editorial position in meeting its public interest obligation, the 1949 Report reversed that decision. In considering the broader issue of fairness, the FCC recognized that editorial expression could take many forms and that "...we have therefore come to the conclusion that overt licensee editorialization, within reasonable limits and subject to the general requirements of fairness..., is not contrary to the public interest." Furthermore, the Commission stated that the broadcast licensees have an affirmative duty to encourage and implement the airing of all sides of controversial issues and that they are also obligated to make their facilities available upon demand for the expression of opposing points of view.⁵ Similarly, in accordance with the belief that the public's need for news, commentary and opinion could only be met by its being able to consider and accept or reject a variety of conflicting views by responsible elements of the community, the FCC reaffirmed its requirement that licensees devote a "reasonable percentage" of their broadcast time to news and public issues in the communities they serve.

Broadcast Access Tests Its Wings

By 1964, the FCC had based enough case-by-case decisions on the now famous "Fairness Doctrine" that it issued a public notice entitled, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."⁶ Interestingly, this report appeared in the same year as the events that eventually led to two landmark decisions, the WLBT and Red Lion cases.

The Office of Communication of the United Church of Christ had joined with two black civil rights leaders in Jackson, Mississippi, in filing a "Petition to Deny" license renewal of station WLBT-TV. The "Petition" was based upon documented evidence that the station had repeatedly taken a segregationist viewpoint in its programming and had ignored a nine-year history of complaints from the black community which represented 45% of its viewers. The FCC considered the "Petition" and issued a one-year "probationary" renewal, but refused to grant a public hearing on the grounds that the church and citizen group challengers did not represent an existing or potential competitor for the license of WLBT-TV. Not easily discouraged, the United Church of Christ took the FCC to the U. S. Court of Appeals. The Court ruled in favor of the Church and granted representatives the right to participate in a public hearing, thus establishing the precedent that public interest groups deserved the same regulatory rights as those enjoyed by competing broadcast applicants. Following a long struggle with both the FCC and broadcast interests, another Court of Appeals decision in 1969 finally ruled in favor of the original "Petition to Deny" and revoked the license of WLBT-TV.

As to the second historic case, it was in the fall of 1964 that radio station WGCB, Red Lion, Pennsylvania, broadcast a "Christian Crusade" program which contained biting remarks aimed at author Fred J. Cook. Under the personal attack provisions of the Fairness Doctrine, Cook asked for air time to reply to the statements of Rev. Billy James Hargis. Having already failed in its affirmative obligation to seek Cook out and supply him with both a transcript and the opportunity to respond, WGCB aggravated matters further by reacting to Cook's request by sending him the station's standard rate card. The FCC's initial position with regard to WGCB was far more supportive of the principle of public access than it had been in the WLBT case. The Commission issued notice that the Red Lion Broadcasting Company had an obligation to afford Fred Cook free time to reply, and thereby set the stage for testing the constitutionality of the Fairness Doctrine.

Red Lion took its appeal to the U. S. Court of Appeals in Washington, D. C., but the Court ruled in favor of the FCC's decision. However, at about the same time in Chicago's Seventh Circuit Court of Appeals, the Radio Television News Directors Association (RTNDA) was also contesting the Commission's rules concerning the provision of reply time for political editorials and personal attacks. Here the Court ruled that the personal attack rules tended to inhibit freedom of the electronic press.

With a disparity in the decisions by our Nation's judicial system, it became obvious that the constitutionality of the Fairness Doctrine would need to be determined in the Supreme Court. Considering the two cases

in a single decision, since known as Red Lion, the Supreme Court ruled unanimously that the Fairness Doctrine and its personal attack rules were consistent with the First Amendment. Delivering the opinion of the Court, Justice White stated, "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.... It is the right of the public to receive suitable access to social, political, esthetic, moral and other ideas and experiences which is crucial here."⁷

The political and social unrest of the 1960's, coupled with the President's increased use of direct access through the broadcast media, contributed to an ever-growing dissatisfaction with the role broadcasting was playing as a forum for the free expression of opposing points of view. In addition, questions of Fairness Doctrine applications to commercial advertising were opened wide when, in December, 1966, a young Manhattan lawyer, John W. Banzhaf III, petitioned WCBS-TV, New York City, for free time to respond to cigarette commercials. The far-reaching implications of this request remained an important question until June 2, 1967, when the FCC issued its opinion in a letter to WCBS-TV.⁸ The Commission stated that the Fairness Doctrine did apply to cigarette advertising, but its ruling was limited solely to that one product. Yet, despite this firm pronouncement, the Commission was undoubtedly aware that through its opinion, a hole had been opened in the dike.

The mood of the legal community was right for the appearance of Jerome Barron's provocative piece, "Access to the Press: A New First Amendment Right," which was published in the May 1967 issue of the

Harvard Law Review. The resounding theme that the First Amendment should be returned to the people had an appealing ring, and it served to feed the growing swell of citizen unrest which was beginning to crest. Citizen groups began springing up throughout the country, and legal advisors, such as the Media Access Project, extended a helping hand. Citizens in Media, Pennsylvania successfully challenged the license renewal of WXUR-AM-FM, a mouthpiece for right-wing preacher Carl McIntire. The FCC's decision to strip the station's owner, Brandywine-Main Line Radio, Inc., of the two licenses was upheld by the Court.⁹ Extension of the Commission's cigarette advertisement ruling to products potentially dangerous to the environment was also forthcoming through the Friends of the Earth and Wilderness decisions.¹⁰ Indeed, the impact of the Fairness Doctrine appeared to be racing out of control.

On June 9, 1971, the FCC initiated a re-examination of the Fairness Doctrine through the release of a "Notice of Inquiry in the Matter of Handling of Public Issues under the Fairness Doctrine and the Public Interest of the Communications Act." While issues of fairness and access were being decided in the courts, the heated debate over the assumptions and applications of the Doctrine was receiving wide public attention. Finally in June of 1974, following the filing of numerous comments and extensive hearings, the FCC issued its "Fairness Report."¹¹ Although the Commission reiterated its original stand on questions of fairness, it refused to set forth new rulemaking, asserting the desire to continue handling

fairness complaints on a case-by-case basis. Pulling in the reins on the mass application of earlier decisions to a wide variety of situations, the FCC dealt a heavy blow to citizen's groups by repudiating the concept of counter-advertising and disclaiming the 1967 cigarette ruling as a Fairness Doctrine precedent. Clearly, the Commission was exercising its prerogative to regain control of the public access controversy. Supported by the Supreme Court decision in the BEM case, the FCC's report served to close the door on requests for "government-dictated access" on the part of the public. Consistent with this position is the finding that during 1973-74, 97% of the roughly 4300 fairness complaints were dismissed out of hand. Of those remaining, only 19 cases involved FCC action against broadcasters.¹²

Although the flurry of activity which characterized the late 1960's and the beginning of the present decade appears to be slowly subsiding, proponents of public access continue their vigil with at least moderate success.¹³ The National Citizens Committee for Broadcasting (publisher of access) and Friends of the Earth are appealing the "Fairness Report" in the U. S. Court of Appeals for the District of Columbia. Other citizens organizations, with tentative FCC approval, are entering into agreements with broadcasters prior to licensee renewal.¹⁴ And while the legal and congressional debates concerning fairness continue,¹⁵ the convictions of such public access advocates as Jerome Barron, Albert Kramer, Nicholas Johnson and Frank Lloyd serve as mottos for individuals and groups seeking to have their voices heard.

Community Ascertainments' Evolution

The principles of access and ascertainment were both implicitly stated in the "public interest" standard put forth in the Radio Act of 1927, and were continually reiterated through rulemaking procedures and license renewal decisions during the next three decades. But the truly fertile seeds of ascertainment which would eventually grow into a formal ruling of its own were planted in the FCC's 1960 "Programming Policy Statement."¹⁶ Clothed in the familiar rhetoric of "the public interest, convenience or necessity," the Commission indicated its position as to how the broadcaster might meet this fundamental obligation:

"The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility."

"The major elements usually necessary to meet the public interest, needs and desires of the community in which the station is located as developed by the industry, and recognized by the Commission, have included: (1) Opportunity for Local Self-Expression, (2) The Development and Use of Local Talent, (3) Programs for Children, (4) Religious Programs, (5) Educational Programs, (6) Public Affairs Programs, (7) Editorialization by Licensees, (8) Political Broadcasts, (9) Agricultural Programs, (10) News Programs, (11) Weather and Market Reports, (12) Sports Programs, (13) Service to Minority Groups, (14) Entertainment Programming."¹⁷

The Commission went on to explain that the decision-making responsibility for all programming matters remained solely with the licensee who was providing a broadcasting service that was in concert with the community served. However, in order to enable the FCC to properly execute its licensing functions, the Commission proposed that future application forms, whether for a new or renewed license, would

require that the applicant state: "(1) the measures he has taken and the effort he has made to determine the tastes, needs and desires of his community or service area, and (2) the manner in which he proposed to meet those needs and desires."¹⁸

For the next few years, the broadcasting industry interpreted the FCC's mandate as applying to programming needs and interests. Hence, it was considered perfectly acceptable to submit a cursory statement which summarized the kinds of consultations which were conducted and the types of programming that were identified. For the most part, this process consisted of going to a few "community leaders" and asking the question, "What kind of programs would you like to see us present?" The predictable responses were either so ambiguous or general, i.e. "more public affairs," "more educational," etc., that they were of little real value to program decision-makers. Thus for all practical purposes, the initial ascertainment process was regarded as a meaningless exercise by virtually everyone involved.

As the years passed, the flexibility of the 1960 ascertainment policy was gradually replaced by requirements for a detailed demographic study of the licensee's broadcast area and specific consultation procedures which insured that various segments of the community were represented. On August 22, 1968 the FCC issued a public notice, "Ascertainment of Community Needs by Broadcast Applicants," which provided specific guidelines for the proper completion of license application forms (Part I, Sections IV-A and IV-B). The notice represented another step toward

increased formality of the ascertainment process and the striking realization that the identification of community needs and the public's programming suggestions were two entirely different matters.

Although the intent of the 1968 notice was to answer existing ascertainment questions, the case-by-case handling of broadcast applications had given rise to conflicting interpretations within the legal community.¹⁹ As in the case of the Fairness Doctrine, the Federal Communications Bar Association pushed for a further statement that would clarify FCC ascertainment policy. Responding to this and similar requests, the Commission adopted a "Notice of Inquiry" on December 19, 1969.²⁰ Responses to the "Inquiry" were split between public and broadcasting camps. Licensees and their trade association, the National Association of Broadcasters, resisted increased formalization of the ascertainment concept. Citizens groups, on the other hand, filed comments strongly supporting stiffer requirements and the abandonment of the "good faith" standard. The result of the "Inquiry" was a revised and expanded "Primer on Ascertainment of Community Problems by Broadcast Applicants" which was released on February 23, 1971.²¹

In short, the 1971 "Primer" requires all commercial broadcast applicants to determine the demographics and composition of their service areas. Then, on the basis of the compositional data, management level employees must conduct personal interviews with a cross section of community leaders within six months of filing the application. In addition, a random sample survey of the general public must be completed by either

station personnel or a professional research organization during the same period as the community leader inquiry. Once both surveys are concluded, the broadcast applicant must (1) list the ascertained needs and problems, (2) determine which needs and problems can be suitably addressed, and (3) cite the specific programs that the applicant will broadcast to deal with those problems.

Revisions and Criticisms of Ascertainment

The confusion, criticism and requests for repeal which have surrounded the four-year evolution of the 1971 "Primer" are second only to those generated by the controversial Fairness Doctrine. Finding themselves inadequately prepared to meet the imposed requirements and rejecting the ascertainment procedures as being burdensome and unproductive, the broadcasting industry has sustained a convincing assault on the "Primer." Petitions for relaxation of specific methodological considerations have resulted in such periodic revisions as permitting management level personnel to substitute joint meetings and telephone interviews for the prescribed face-to-face personal interviews.²² Frustration over the uniform application of the guidelines to all commercial licensees without apparent regard to station type or market size gave rise to complaints of unfair practices and economic hardships.

In 1973, the Commission opened several "Inquiries" to resolve a number of the questions that had been raised. The commercial television renewal application form was revised and an annual reporting form was created. Rather than filing the general ascertainment information at

renewal time, commercial television licensees were subsequently required to compile an annual list of the ten most significant problems existing in the community during the previous twelve months, and illustrative programming that was broadcast by the licensee in response to those problems.²³ In addition, all commercial stations were required to commence broadcasting, every 15 days, public notices inviting comments about station performance. Responding to the question of whether the respective roles of radio and television were sufficiently different to warrant separate ascertainment guidelines, the Commission solicited further reactions from interested parties.

From an educational standpoint, probably the most significant "Inquiry" released during 1973 dealt with the petitions from individuals and citizen's groups that sought to bring noncommercial educational (public) radio and television stations within the province of the ascertainment requirement. Noncommercial stations had been purposely excluded from the "Primer," but the Commission had stated in its rulemaking that the educational broadcasting exemption should not be considered as being permanent. Before the end of 1971, petitions for further rulemaking had been filed by representatives of three black organizations and several individuals.²⁴ Among the positions expressed was the conviction that the gradual programming shift away from "instructional" and toward "public" necessitated a more affirmative obligation in the areas of access and ascertainment. Keeping its 1971 promise to educational broadcasters while responding to the petitions received, the Commission released its

"Notice of Inquiry" on September 11, 1973.²⁵

By mid 1975, sufficient time had elapsed to permit the filing of numerous comments and replies, and allow the slow-moving Washington machinery to prepare its findings and issue a report. Turning first to the commercial arena, the FCC issued a proposed rulemaking on May 15th which it hoped would help satisfy critics from both the industry and public sectors.²⁶ The Commission proposed that broadcasters engage in "continuous ascertainment" throughout the license period instead of six months prior to the date of renewal application. While television and radio were not found to require different ascertainment standards on the basis of their respective roles, stations operating in communities of less than 10,000 population (estimated to affect 1,900 radio and 14 television stations) would be exempted from formal ascertainment procedures. Following the precedent set for television stations in 1973, radio stations would be expected to maintain in their public files lists of the ten most significant community problems and examples of typical programs that were aired to meet them. Other proposed revisions included the relieving of station management from the responsibility of conducting the community leader survey, expansion of acceptable interviewing methods, and the replacement of the compositional study with a 19-point community element checklist provided by the Commission.

The proposed rulemaking which was directed at educational broadcasters appeared on August 14, 1975. In its "Notice," the Commission stated, "Based on our review of the record in this proceeding, we are

convinced that noncommercial broadcasters should be subject to formal ascertainment requirements."²⁷ Identifying the pending revisions which were proposed for commercial stations, the FCC explained that they would similarly apply to noncommercial licensees. However, the Commission promised to allow the educational broadcaster "considerable flexibility in planning its leader survey," and encouraged noncommercial applicants to "experiment with a variety of methods and view this freedom, in fact, as a proving ground for methods which might at a later date be applied in the commercial context."²⁸ Comments were invited on possible options for the general public survey, including periodic audience participation programs that focused on the discussion of community problems. Licensees providing only instructional programming were exempted from the ruling (as were small 10-watt stations), but a specific definition was given to enable a clear distinction between instructional (in-school) and "educational" or "public" programs. The deadline for responses to proposed rulemakings for both commercial and educational licensees has since passed, and the waiting period for notices of formal adoption has begun.

An Assessment of Access and Ascertainment

Although the FCC undoubtedly derives some degree of satisfaction from what it considers an on-going "fine tuning" of the fairness and ascertainment requirements, the problems which are associated with these complex issues are far from being resolved. As noted earlier, a fundamental conflict exists between the inherent motives of the commercial market place and the basic principles which have been afforded by the First

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Amendment. Attempting to foster the economic growth of a multi-faceted telecommunications industry while fulfilling a congressional mandate to serve the "public interest" has frequently placed the Commission in a thankless position. The FCC has carried the banner of access into prime time television²⁹ and across the field of cable communications,³⁰ but neither effort has met with much success. The program diversity which was so strongly recommended for commercial television in the late 1960's and was supposedly assured by the "Prime Time Access Rule" has failed to materialize. CATV's much-heralded public access channels which began arriving on the scene during the early part of the present decade have remained relatively dark. When someone does take the initiative to utilize a cable system's access channel, it is not uncommon for the operator to repeat the program three or four times.³¹ Thus, one lesson which has been learned from this experience is that access to communications technology does not necessarily guarantee an improvement in the quality or diversity of the messages transmitted.

In the case of both the Fairness Doctrine and proper implementation of the formal ascertainment requirements, the FCC faces a dilemma. By the very Act that brought the Commission into existence, it is restricted from venturing very far into the area of program content. But at the same time, the FCC is responsible for determining that each station's performance is in agreement with the "public interest," and to a large extent, performance and programming are synonymous. Broadcasters have chided the Commission at every opportunity, calling the Fairness Doctrine a "strangle

hold" and the ascertainment process an "exercise in futility." Citizen groups continue to press for increased FCC intervention, and persist in the belief that anything less than a formal access and ascertainment commitment from broadcasters is comparable to no commitment at all.

Unfortunately, the academic community has been of little help in resolving the stalemate. Scholarly research which has investigated the ascertainment issue has been directed toward, "(1) the adequacy of the various methodological strategies employed by station management; (2) the utilization of such data in the actual application for renewal; and (3) the social policy issues implicit in the requirement that a broadcaster have contact with both community leaders and a survey of the general public."³² In each of the areas, selected findings from different studies could be used to support a particular point of view. As an example, using data provided by Baldwin and Greenberg³³ one could argue that there is a significant discrepancy between information elicited from community leaders and that provided by the general public. Interestingly, the findings of Surlin and Bradley³⁴ can be used to demonstrate that a high correlation exists between the problem rankings of the community leaders and the general public sample. Careful extraction of various results from the research of Baldwin and Surlin,³⁵ Foley,³⁶ Surlin,³⁷ LeRoy³⁸ and LeRoy and Ungurait³⁹ could enable a skillful manipulator to develop an impressive argument for any one of several opposing positions. This is not to suggest fault in the research cited, but rather to illustrate the exploratory stage of current inquiries. As explained by Baldwin and Greenberg

in comments to the FCC, "...we lack confidence in the present knowledge about ascertainment methodology. There are new techniques to be tried and refinements to the variety of procedures which have already been attempted."⁴⁰

Research such as that above and the studies currently in progress,⁴¹ are contributing to our understanding of the interrelated issues of access and ascertainment. Methodological studies are attempting to determine whether formal ascertainment requirements are more practically effective than informal feedback, and whether existing guidelines should be replaced with more productive alternatives. The FCC's recent proposed rulemaking for educational broadcasters encourages experimentation and suggests specific avenues of research that will contribute to constructive revisions in the ascertainment process. Developments in organizational communication, arbitration and management relations could afford new theoretical models which might greatly influence the evolution of telecommunications policy at both local and national levels. Broad social awareness of the citizen's role in shaping America's communications industry is just starting to emerge. The next twenty years will witness a growing emphasis on citizen feedback systems throughout our society, and the mechanisms of broadcast access and ascertainment will be among them.

FOOTNOTES

1. "In the Matter of The Mayflower Broadcasting Corporation and The Yankee Network, Inc.," 8 FCC 333,338, (January 16, 1941). A portion of the Decision and Order published in Frank J. Kahn (ed.), Documents of American Broadcasting. New York: Appleton-Century-Crofts, 1968, pp. 349-351.
2. Ibid. p. 350.
3. "Report on Editorializing by Broadcast Licensees," 13 FCC 1246, (June 1, 1949). Published in Kahn, pp. 361-374. Ref. p. 363.
4. Ibid. p. 368.
5. The 1949 Report also addressed itself to the additional obligations of a licensee should a person or group be attacked over the station. This principle of fairness was incorporated into the FCC rules in 1966 in order to provide the specific grounds for invoking sanctions against violators. See "Personal Attack and Political Editorials," FCC Section 73.123.
6. FCC Public Notice of July 1, 1964, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 29 Federal Register, 10415-10416, (1964).
7. Red Lion Broadcasting Co., Inc. v. Federal Communications Commission; United States v. Radio Television News Directors Association, 395 U. S. 367 (June 9, 1969), 390.
8. The Commission later adopted a "Memorandum Opinion and Order," RM-1170, FCC 67-1092, (September 8, 1967).
9. Brandywine-Main Line Radio, Inc. v. Federal Communications Commission, 25 R.R. 2d 2010, U.S. Court of Appeals for the District of Columbia (1972).
10. Friends of the Earth v. Federal Communications Commission, 449 F. 2d 1164, U.S. Court of Appeals for the District of Columbia (1971). In re Wilderness Society, 30 FCC 2d 643 (1971).
11. "Fairness Report Regarding Handling Public Issues," 48 FCC 2d 1 (1974).
12. Chris Wells, "The Fairness Doctrine," TV Guide, Vol. 23, No. 35 (August 30, 1975), p. 9.

Footnotes - continued

13. Some broadcasters contend that increased sophistication and knowledge of the license renewal process makes current citizen groups far more effective than in the past. See Broadcasting, June 2, 1975, pp. 38-39, 42.
14. At the time of this writing, an FCC policy statement and notice of proposed rulemaking had been issued and comments filed (Docket 20495). See Broadcasting, June 2, 1975, p. 30, and August 4, 1975, pp. 31-32.
15. As of September 8, 1975, two bills in each house of Congress were designed to eliminate the "Fairness Doctrine." The bills and their sponsors are as follows: S.2 by William Proxmire (D-Was.), S.1178 by Roman Hruska (R-Neb.), H.R. 2189 by Robert Drinan (D-Mass.), and H.R. 4928 by Charles Thone (R-Neb.).
16. "Report and Statement of Policy Re: Commission En Banc Programming Inquiry," FCC 60-970 (July 29, 1960). Reprinted in Kahn, pp. 207-223.
17. Kahn, p. 217 and p. 219.
18. Ibid. p. 221.
19. Examples of FCC decisions involving ascertainment issues which were completed during the 1960's include: Suburban Broadcasters, 302 F 2d 191, D.C. Cir., (1962); Minshall Broadcasting Co., 11 FCC 2d 796 (1968); Sioux Empire Broadcasting Co., 16 FCC 2d 995 (1969); City of Camden, 18 FCC 2d 412 (1969).
20. "Notice of Inquiry," 20 FCC 2d 880 (December 19, 1969).
21. See Federal Register, Vol. 36, No. 42 (March 3, 1971).
22. For example, see Southern California Broadcasters Association, 30 FCC 2d 705 (1971), and 41 FCC 2d 519 (1974).
23. "Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses," 43 FCC 2d 1 (1973).
24. National Association of Black Adult Educators, National Black Law Students Association, National Association of Black Students, and Hollis H. Larkin, Jr. jointly filed RM-1851, August 31, 1971; and Sandra W. Bennett filed RM-1874 on November 1, 1971.
25. "Notice of Inquiry and Notice of Proposed Rulemaking," FCC 73-930 (September 11, 1973).

Footnotes - continued

26. "Further Notice of Inquiry and Notice of Proposed Rulemaking," Docket 19715, FCC 75-540 (May 15, 1975).
27. "Further Notice of Inquiry and Further Notice of Proposed Rulemaking," Docket 19816, FCC 75-923 (August 14, 1975), p. 13.
28. Ibid. p. 17.
29. In 1970 the FCC adopted the "Prime Time Access Rule" which limited commercial TV stations in the top 50 markets with three or more television stations to three hours of network programming between 7 p.m. and 11 p.m. (6 p.m. and 10 p.m. Central and Mountain time). Labeled as a total failure to increase program diversity and stimulate local and independent production (as documented by the FCC's own research staff), the "PTAR" has been revised, but not required. The latest version of the rule, instituted for the 1975-76 season, returns an additional hour to the networks on Sunday nights.
30. The Commission released its "Cable Television Report and Order" on February 3, 1972. Included in the provisions for local origination channels was the requirement that all cable systems in the top 100 markets be required to maintain a public access channel and limited production facilities on a first come, first served basis. While the effective date for compliance was set for March, 1977, local franchise regulations in some communities have required an access channel for several years.
31. The Network Project, Cable Television: End of a Dream. New York: Columbia University (Summer 1974), p. 24.
32. David J. LeRoy and Donald F. Ungurait, "Ascertainment Surveys: Problem Perception and Voluntary Station Contact," Journal of Broadcasting, Vol. 19, No. 1 (Winter 1975), p. 23.
33. Thomas F. Baldwin and Bradley S. Greenberg, "A Comparison of Public and Community Leader Attitudes Toward Local TV Programming Needs," Journal of Broadcasting, Vol. 13, No. 2 (Spring 1969), pp. 111-123.
34. Stuart H. Surlin and Les Bradly, "Ascertainment Through Community Leaders," Journal of Broadcasting, Vol. 18, No. 1 (Winter 1973-74), pp. 97-107.
35. Thomas F. Baldwin and Stuart H. Surlin, "A Study of Broadcast Station License Application Exhibits on Ascertainment of Community Needs," Journal of Broadcasting, Vol. 14, No. 2 (Spring 1970), pp. 157-170.

Footnotes - continued

36. Joseph M. Foley, "Ascertaining Ascertainment: Impact of the FCC Primer on TV Renewal Applications," Journal of Broadcasting, Vol. 16, No. 4 (Fall 1972), pp. 387-406.
37. Stuart H. Surlin, "Ascertainment of Community Needs by Black-Oriented Radio Stations," Journal of Broadcasting, Vol. 16, No. 4 (Fall 1972), pp. 421-429.
38. David J. LeRoy, "Attitudes Toward Local Programming Needs: A Comparison of a Northern and Southern Sample of Community Leaders and Respective Publics," Southern Speech Communication Journal, Vol. 38, No. 1 (Fall 1972), pp. 80-90.
39. LeRoy and Ungurait, op. ct.
40. Thomas F. Baldwin and Bradly S. Greenberg, "Comments on the Matter of Ascertainment of Community Problems by Educational Broadcast Applicants," Docket 19816, January 30, 1974, p. 1.
41. Mary Ann Heller, "Alternative Methods of Ascertaining Community Problems for Broadcast Stations," (working title), doctoral dissertation in progress, Department of Communication, University of Utah; Charles Clift, "Local Television Programming and the Public: An Analysis of Programming Changes Directly Related to Public Input Using a Derived Measure of 'Improved Programming,'" NAB supported research in progress, School of Radio and Television, Ohio University; Jon A. Coleman, "Community Ascertainment by Broadcasters: A Suggested Methodology," NAB supported research in progress, Department of Speech, University of Oregon. See also the NHK theoretical paper by Kaxuhiko Goto, "Access, Participation and Editorial Control: Non-technical Problems in Future Broadcasting Plans," Studies of Broadcasting: An International Annual of Broadcasting Science, Tokyo: The Theoretical Research Center (1975), pp. 5-20.